IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 305 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PUNABHAI RUPSANGBHAI KOLI PATEL - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR UI VYAS for Appellant(s) : 1,
MR.A.J.DESAI, ADDL.PUBLIC PROSECUTOR for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 20/04/2007

ORAL JUDGMENT

Present Appeal is preferred against the judgment and order of conviction and sentence passed by the learned Special Atrocity Judge, Ahmedabad (Rural), on

4th April, 1998, in Special Case No.48 of 1994, whereby the learned Judge was pleased to convict the appellant-accused for the offence punishable under Section 3 (1) (10) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and sentenced him to undergo three years rigorous imprisonment and to pay a fine of Rs.500/-, in default, thereof to undergo six months. The learned Judge was also pleased to convict the appellant-accused for the offence punishable under Sections 506 (2) and 504 of the Indian Penal Code and sentenced him to undergo six months rigorous imprisonment for offence punishable under Section 506 (2) and three months rigorous imprisonment for offence punishable under Section 504 of the Indian Penal Code. The learned Judge has ordered that all the sentences should run concurrently.

2. Heard learned Counsel, Mr.U.I.Vyas, appearing for the appellant and learned A.P.P., Mr.Desai, appearing for the respondent-State. Both the Counsel has taken this Court through the judgment and order under challenge, so also, the oral evidence led during the course of trial. The judgment is assailed on various grounds mentioned in paragraph

No.5 of the memo of appeal.

3. To appreciate the rival side contentions firstly, it would be necessary for the Court to state the prosecution case in brief. That on 19/3/1994 the complainant after closing of the school was going towards village Bus-stand and the other teachers had left the school and were proceeding in the direction of bus-stand, at that time present appellant-accused came to school compound and started to give foul abuses and thereby insulted the complainant. The appellant-accused had caught hold of the wrist of complainant, addressing her as '*dhedhdi*' and gave threat of her life by setting her on fire. He also gave threat that he after putting all school teachers in a class room will ablaze them on fire. It is also the case of prosecution that present appellant-accused had given a threat that when the complainant will come to school on the next day, he would kill her. On such complaint given by the complainant it came to be registered for the offence punishable under Sections 3 (1) (10) of the Atrocities Act, so also, under Sections 506 (2) and 504 of the Indian Penal Code. Investigation was carried out and on completion of the investigation, the Police filed the

charge-sheet.

4. The prosecution has examined nine witnesses including the Investigating Officer to corroborate the version of the complainant. On plain reading of the evidence of the prosecution including the complaint, it emerges that before the complainant and other teachers had left the school compound and proceeded towards bus-stand, because of quarrel taken up by the accused with the complainant, some of the prosecution witnesses had rushed to the spot of incident. It was not difficult or impossible to rush to the school again for other teachers or a staff members of the school in a couple of minutes. Reading of the evidence of the complainant and other witnesses it emerge that accused was not knowing the caste of the complainant that she belongs to schedule caste community. The complainant-teacher has accepted in the complaint itself that she had reprimanded the students who were quarreling in the class-room. The students were of first standard and must be of tender aged. The Court can and it is possibly to visualize the nature of quarrel or type of mischief that students might have played with each other in the class-room. After going home from school, a student

reprimanded by the complainant appears to have made complaint about punishment given to him. It is not the case of prosecution that student who was reprimanded or punished by the complainant was son of the appellant-accused. It has come on record that student reprimanded by the complainant was nephew of the appellant-accused. It is true that accused ought not to have rushed to school immediately; he could have inquired about the reality or the reason for punishment made to his nephew and then he should have gone to the school but instead he rushed and committed criminal wrong holding the wrist of a class teacher. This is an indecent and punishable conduct. However, there is no complaint of the nature that the accused had committed offence punishable under Section 354 and such intention is never been alleged or pleaded by the prosecution during the course of trial. The act of accused was a ventilation of his personal anger generated in his mind.

5.(i) It was a blast of an illiterate rustic villager against the teacher who had punished his nephew in a small event of '*inter se*' quarrel amongst the students or for the reason of minor mischiefs played by his nephew of tender age. The evidence is

on record shows the nature of punishment given to the concerned student. The learned Judge has not evaluated the evidence with broader perspective in the matter.

5.(ii) The complainant belongs to schedule caste and, therefore, in all probability she thought that as she belongs to schedule caste, she was abused and insulted and was administered threat.

6. The scheme of Section 504 and 506 (2) of the Indian Penal Code is clear and law on this point is settled. If the evidence of prosecution is accepted, it would be risky for the Court to link the accused with the crime for the offence punishable under Section 506 (2) of the Indian Penal Code. The alleged threat administered by the accused was general in nature and it was not to an individual including the complainant, if the basic story of prosecution is considered.

7. It is well settled that to bring home the charge of the offence punishable under the Atrocities Act, the prosecution should establish beyond reasonable doubt that the member of the schedule

caste or schedule tribe is insulted or abused only because she belongs to schedule tribe or schedule caste community. The presence of '*mens rea*' is also required to be established. On the contrary in the present case the evidence speaks that appellant-accused quarreled with the teacher whosoever he or she may be, irrespective of cast or sex, who had punished his tender aged nephew for alleged mischief that he might have played with other student of the class-room. In all probability the intention of the accused was not to insult the complainant because she belong to schedule caste or community and that too with an intention to lower down her dignity and status by addressing her caste name. Whether the '*mens rea*' was present was a question before the trial Court. In response of the query raised by the Court to learned A.P.P.,Mr.Desai, and his response after going through the evidence led by the prosecution, it emerges that there is no sufficient evidence to infer '*mens rea*' (such intention) in the mind of the accused.

8.(i) The complainant has remained present personally during the course of hearing of the present appeal and she has fairly accepted before the

Court that even during the course of trial the matter was clarified and was likely to be settled. Now she has been transferred to some other village. Ultimately, she is an educated lady and a Government servant. If she was really insulted being a member of the schedule caste, she would not have agreed to accept the proposition that she was not insulted because she belongs to schedule caste member. She has realized that it was an outburst only of a guardian or an elderly member of the family whose child was punished by a class teacher.

8.(ii) It is the experience of the society that in number of cases parents or elderly member of the family of a student punished by school authorities make outburst in the school without knowing the hard reality and against all wisdom and becomes irrational. Such outburst may be against either the class teacher who punished the child or the Principal of the school. The learned trial Judge, therefore, considering this probability and some over exaggeration made by prosecution witnesses including the complainant ought to have acquitted the accused giving him benefit of doubt from the offence punishable under the Atrocities Act.

8.(iii) The usage of bare words by the accused that he will kill either victim or somebody is not sufficient to prove the charge of the offence punishable under Section 506 (2) of the Indian Penal Code. In most of the cases such words are being used under either mere madness or heat of excitement or for the sake of utterance without such intention. To bring home the charge of offence punishable under Section 506 (2) of the Indian Penal Code, the prosecution has to prove the criminal intimidation and that too of administering threat of causing death or grievance hurt or to cause damage to any property by fire. The words used in language in spirit of Section 506 (2) of IPC has not been exactly and satisfactorily proved by prosecution. The nature of evidence led by prosecution in this regard is found insufficient to infer commission of offence. Such evidence cannot be accepted as adequate or cogent evidence to link the accused with the crime for the offence punishable under Section 506 (2) of the Indian Penal Code. It appears that the accused was responsible for administering threat of evil consequence if his nephew is manhandled or punished in future together by him, otherwise, there was no

reason for the accused to catch hold of the wrist of the complainant. The act of caught hold of the wrist of the complainant is a grave corroborative circumstance to establish the say of the complainant that she was insulted and threatened and the accused has thus committed offence punishable under Section 504 and under Section 506 (1) of the Indian Penal Code. The trial Judge ought to have held the accused guilty of the charge for the offence punishable under Section 504 and under Section 506 (1) of the Indian Penal Code. The judgment of the trial Judge is based on sound reasons so far as linking the accused with crime for the offence punishable under Section 504 of the Indian Penal Code.

9. It is settled that appellate Court if is in agreement with the reasons assigned by the learned trial Court, it is not necessary to rewrite the entire judgment and Court can adopt the reasons assigned by the learned trial Court and therefore in light of the aforesaid discussion conviction of the appellant-accused for the offence punishable under Section 504 of the Indian Penal Code is confirmed. However, the conviction for the offence punishable under Section 506 (2) of the Indian Penal Code is

converted into offence punishable under Section 506 (1) of the Indian Penal Code.

10. Today the complainant in the company of her husband and her Advocate, Mr.Vishal Mehta is present before the Court. The accused alognwith Sarpanch of the village and some of the witnesses who were examined during the course of trial are also present before the Court. The complainant has submitted affidavit with a copy of declaration which was given by the appellant-accused. The accused has been identified by his Advocate, Mr.Vyas. These documents support the reasons assigned by the Court while dealing with the order of conviction qua the offence punishable under the Atrocities Act and also under Section 506 (2) of the Indian Penal Code. Of course, the complainant has stated that accused may be pardoned and he may not be sent to jail for any further period. Her oral say before the Court is that as the accused had remained in jail for some days, she is not interested in sending the accused in jail for any further period. The complainant also stated that she was ready to close the chapter earlier but it could not be materialized for some extraneous reasons till the trial concluded. The

Court is aware that the accused could not have been given the benefit of Probation of Offenders Act if ultimately found guilty of the charge of offence punishable under the Atrocities Act and punishment is less than minimum prescribed. The Court should also keep one thing in mind that after about 13 years the complainant has expressed her anxiety before the Court that before the trial Court also she told that she would not like to send the accused in jail but ultimately the offence registered by the Police, was not an offence of a criminal wrong qua an individual but it is the offence against the State and therefore, the Court conclude the trial. This is a case instituted on a Police Report. It appears that the learned trial Judge has therefore attempted to decide the case on merit. Of course, the material errors have been committed by the learned trial Judge in appreciating the nature and strength in the evidence that was led. However, it is neither stated in her affidavit of the complainant nor orally it has been submitted to the Court that accused may be acquitted from all the charges. The say of learned Advocate, Mr.Mehta, for the complainant on instructions is that in the event of alteration of order of conviction, when the court is not holding

the accused guilty of offence punishable under the Atrocities Act, then for other offences found proved under IPC, the complainant is not interested in sending the accused to the jail because after lapse of about 13 years the has accused expressed his regret about his misconduct in no uncertain terms. Thus, the question of total acquittal does not arise.

11. The say of learned A.P.P., Mr.Desai is that looking to the totality that emerges from the evidence it would be sufficient for the Court that conviction for the offence punishable under Section 504 of the Indian Penal Code is upheld and conviction under Section 506 (2) is altered to 506 (1) of the Indian Penal Code.

12. Before parting with the judgment, the Court would like to observe that during the course of hearing of the appeal, learned Advocate, Mr.Mehta appearing for the complainant had submitted to the Court that there is consensus between the parties and they have decided to settle the matter and complainant, therefore, has been asked to remain present and she therefore, is present in the Court. Mr.Vyas, learned Counsel for the appellant, learned

A.P.P., Mr.Desai, and Mr.Mehta, learned Counsel for the complainant have not insisted the detail discussion of the depositions of the witnesses individually and therefore, this Court has made general comments on the merit on evaluation of the evidence led by the learned trial Judge after going through the version of the witnesses examined during the course of trial including the complainant.

13. In the result, the present appeal is partly allowed. The order of conviction and sentence passed by the learned Special Atrocity Judge, Ahmedabad (Rural) in Special Case No.48 of 1994, is hereby modified.

13.1 The order of conviction and sentence for the offence punishable under Sections 3 (1) (10) of Prevention of Atrocity Act is hereby quashed and set aside. Fine, if paid, be refunded to the appellant-accused on proper identification, so far as the offence punishable under the Atrocity Act is concerned.

13.2 So far as order of conviction and sentence for the offence punishable under Section 506 (2) of

Indian Penal Code is concerned, the same is hereby altered and instead of order of conviction and sentence imposed by the ld. Trial Judge for the offence punishable under section 506(2) of the IPC, the appellant accused is hereby convicted for the offence punishable under section 506(1) of the IPC and is ordered to undergo the sentence already undergone.

13.3 So far as the order of conviction and sentence for offence punishable under Section 504 of the Indian Penal Code is concerned, the same is hereby confirmed. However, the order of substantive sentence imposed by the trial Court is reduced to the period already undergone so far as offence punishable under Section 504 of the Indian Penal Code.

13.4 Bail-Bond executed by the appellant-accused shall stand discharged. Order and Direction accordingly.

(C.K.BUCH, J.)

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